THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1474 of 2001

National Insurance Company Ltd. …… **Appellant.**

Versus

Gaje Singh
And others. ….. **Respondents.**

Coram : Hon' ble P.C. Verma, J.
Hon' ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 17-8-2001, passed in M.A.C. T. No. 172 of 1997, Smt. Bimla Devi and another Vs. Gaje Singh and others, by the Motor Accident Claims Tribunal/III F.T.C. Dehradun ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 5,43,,000/- along with interest @ 9% per annum in favour of the claimants-respondent no. 5 and 6 as against the Opposite Party No.3-appealant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of quantum of compensation and that the Insurance Policy in question showing the vehicle in question duly insured was obtained in collusion between the owner of the vehicle and one Rakesh Segal, Development Officer of the appellant-Insurance Company itself.

Brief facts, giving rise to the present appeal, are that a petition for compensation under the Act was filed before the learned Tribunal for the death of Pramod Kumar **(the deceased)** as a result of injuries sustained by him in a motor accident, with the allegations that the deceased was sitting in a Vikram No. UMU 9941 on 20.5.1997 at about 9 p.m. and was waiting for his brother to come. In the meantime, one oil Tanker No. UP 08-1563 came

from the side of Rishikesh driven rashly and negligently by its driver and from the wrong side hit the said Vikram, with the result the said Pramod Kumar sustained grievous injuries. He was rushed to the hospital, where he succumbed to his injuries in the night intervening 20/21-5-97. Post Mortem of the dead body was conducted and F.I.R. was lodged with the police, thereby driver of the offending Tanker was challaned. It is alleged that O.P. No. 2 Imran was the driver of the offending vehicle, owned by O.P.-respndent no. 1 and duly insured with O.P. No.4-the appellant. The deceased was aged 26 years and was earning Rs. 5,000/- per month at the time of the time of his death.

The Opposite Parties No. 1 and 3 contested the claim petition by filing their separate written statements. O.P.No.1 owner of the Tanker has denied all the allegations of claim petition. It has been asserted by him that since the Oil Tanker was duly insured on the date of accident, therefore, the liability for compensation rests on the Insurance Company-appellant. O.P.No.2 has not filed any written statement to contest the claim petition.

O.P. No.3-appellant has asserted in its written statement that the insurance policy in question has been obtained by mis-representation and fraud and the same was void ab-initio, therefore, the insurance company is not liable for compensation. The appellant had also taken up all the defences as available to the insured on the ground of collusion. Plea of non-joinder of owner and insurance company of the said Vikram and one scoter. Involvement of oil tanker has also been denied and income of the deceased has also been challenged. Opposite Party Nos. 4 and 5 are proforma parties and they have not contested the petition.

On the application of the O.P.No. 3 **(19-C2),** the appellant-Insurance Company was allowed to contest the claim

Petition on all the grounds which were available to the insured, as mentioned earlier.

On the pleadings of the parties, the learned Tribunal has farmed as many as **four Issues** in the case. **Issue No.1** related to rash and negligent driving by the driver of offending Truck No. U.P.-08-1563 resulting into grievous injuries and consequent death of the deceased Pramod Kumar in a motor accident on 20.5.1997. **Issue No. 2** related to non-joinder of necessary parties. **Issue Nos. 3 and 4** related to relief sought by the claimant.

The learned Tribunal after hearing both the parties and going through the entire evidence on record, found on **Issue No.1** that the motor accident resulting in the death of the deceased occurred due to rash and negligent driving by the driver of Tanker No. U.P.-08-1563. On **Issue No. 2,** the learned Tribunal has held that the claim petition is not bad for non-joiner of necessary parties. On **Issue Nos. 3 and 4,** the learned Tribunal after considering the evidence both oral and documentary, came to the conclusion that the admitted age of the deceased was 26 years at the time of his death. The average income of the deceased has been determined at Rs. 4000/- per month. Then the Tribunal has calculated annual income, which comes to Rs. 48,000/-. After deducting 1/3rd towards personal expenses of the deceased, the learned Tribunal has rounded the annual loss of dependency at Rs. 30,000/-. Multiplier of 18 has been applied to assess the amount of compensation and Rs 3,000/- have been awarded towards funeral expenses. Thus, total compensation of Rs. 5,43,000/- has been awarded in favour of the claimants-respondents No. 5 and 6.

After determining the income and quantum of compensation, has elaborately discussed the plea of the Insurance Company whether the Insurance Policy has been obtained by mis-representation or fraud and whether the Insurance Company is not

liable to pay compensation or otherwise. This matter has been seriously considered by the learned Tribunal and relying upon the statement of witness of the O.Ps., namely, D.W.4, Amit Kaur, the Administrative Officer of the Insurance Company and after perusing the oral and documentary evidence, it has been held by the Tribunal that Sri Rakesh Sehgal was a duly authorized agent as on the relevant date, i.e. 19-5-97 and 20.5.97 to receive the premium for and on behalf of the Insurance Company. Before coming to the conclusions the learned Tribunal has considered voluminous case laws referred to on behalf of the parties and the same have been cited in the impugned judgment and award. Having gone through the entire material before us, we are satisfied that the learned Tribunal has recorded a correct finding that the Insurance Company-appellant is liable to pay compensation. The learned Tribunal has also referred to section 238 of the Indian Contract Act in its judgment and award and the tribunal has ultimately, held that in view of provisions of Section 238 of the said Act, it is clear that Company is wholly liable for the act and omission on the part of its agent, who happened to be Sri Rakesh Sehgal, even though he made certain mis-representation or fraud with the principal. Even otherwise, the Insurance Company had received the consideration on 26.51997, therefore, the appellant-company is liable to third party liability and would be at liberty to recover the amount of loss from its agent of delinquent officer.

The learned counsel for the appellant-Insurance company submitted before us that the findings regarding quantum of compensation recorded by the learned Tribunal are not in accordance with law and are not based on record as well as on the grounds of collusion between owner and development Officer of the appellant-Insurance Company itself. The impugned judgment and award has not been challenged on any other ground before us.

We have heard the learned counsel for the appellant, Mr. Lalit Belwal and Mr. N.S. Negi, appearing on behalf of the claimant-respondents Nos. 5 and 6 as well as Mr. Nagesh Agarwal, Advocate, appearing for the Respondent No. 1 and have carefully gone through the entire material on record as well as the impugned judgment and award.

We have considered the controversy of collusion of Development Officer of the Insurance Company with the insured from all the four corners and find that no illegality or infirmity has been committed by the learned Tribunal on this score and liability has rightly been fastened on the Insurance Company-appellant to pay compensation. The learned counsel for the appellant has not been able to convince us as to how the findings arrived at by the learned Tribunal are contrary to law or against the evidence on record. Moreover, this matter is purely a matter of relationship of master and servant. From the record, it is fully established that a departmental enquiry is going on against Sri Rakesh Sehgal, the alleged Development Officer under the employment of the Insurance Company. It is further significant to note that the cover-note and the Insurance Policy in question was never cancelled and it remained in force for complete one year from the date of its commencement. The matter of default of a servant against his master can be dealt with in accordance with the Departmental Punishment Rules and the said remedy has been available to the appellant. While dealing with the present appeal, we are not inclined to make any specific comments on this point. The argument advanced by the learned counsel for the appellant is not tenable and cannot be accepted.

From the close scrutiny of the entire record, we find that on record from the oral evidence of Smt. Bimla Devi, the widow of the deceased **(P.W.1)** it has not been proved that the amount of Rs. 2,50,000/- was spent on the treatment of the

deceased. Admittedly, the deceased has died on the same night after the accident. When there is no document on record to support this contention, it cannot be presumed that such a huge amount was incurred in the treatment. The Tribunal has rightly declined to accept this plea of the claimants and has rightly awarded Rs. 3000/- towards funeral expenses. The Tribunal has taken the monthly earning of deceased to Rs 4,000/- per month. In the circumstances of the case, it appears to us that this amount has been reasonably taken as per month income of the deceased by the Tribunal and has rightly deducted 1/3rd of the same towards personal expenses of the deceased. The age of the deceased was undisputedly 26 years at the time of accident, therefore, multiplier of **18** has been properly applied to come to a just compensation for Rs. 5,43,000/-. We are also of the view that the amount of compensation determined under the impugned award is just and proper to meet the ends of justice in the present case. We are unable to take a different view on this score also.

Thus, in any of view of the matter, we do not find any reason to interfere with the conclusions arrived at by the learned Tribunal and the judgment and award under appeal deserves to be upheld. Accordingly, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, in upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
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